

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

RICKIE GREEN

PLAINTIFF

VS.

CASE NO. 2:07CV0092 JMM/HLJ

**WENDY KELLEY,
DEPUTY DIRECTOR, ADC, ET AL.**

DEFENDANT

ORDER

Pending before the Court is plaintiff's December 13, 2007 *pro se*¹ Motion for Reconsideration of the Court's November 29, 2007 Order adopting the Magistrate Judge's November 14, 2007 Partial Report and Recommendation ("Report") which dismissed Wendy Kelley as a defendant in this case. For the reasons stated below, the motion is denied (#63).

Plaintiff contends that the Court failed to take into account an October 19, 2007 four page declaration with exhibits in making its decision to adopt the Magistrate Judge's Report. Attached to plaintiff's Motion to Reconsider is a copy of his October 19, 2007 pleading.

Plaintiff's belief that the Court failed to review his pleading is based upon the language in the Court's Order adopting the Magistrate Judge's Report which states that there had been no objections to the Report. It is plaintiff's position that his October 19, 2007 pleading should have been construed as objections to the Report and the Court was in error when it stated that there had been no such objections.

The Court has reviewed the docket and finds that on October 11, 2007 the Magistrate Judge construed defendant Kelley's August 19, 2007 Motion to Dismiss as a motion for summary judgment pursuant to Federal Rule of Civil Procedure 12(b)(6) and ordered the parties to submit any additional exhibits, affidavits, or briefs in support of their respective positions, within ten days.

¹Plaintiff was appointed counsel on December 21, 2007.

Plaintiff filed a Declarations and Attachments Supporting Plaintiff's Response to Defendant Kelley's Motion to Dismiss on October 19, 2007. The declaration and attachments are the same as the documents filed with plaintiff's Motion for Reconsideration.

Defendant Kelley filed a Reply to plaintiff's Declaration and Attachments on October 30, 2007. Plaintiff filed an additional Declaration on November 8, 2007.

After reviewing all of these pleadings, the Magistrate Judge filed his Report. There were no new objections filed by plaintiff or defendant.

The Court adopted the Magistrate Judge's Report and correctly stated that there had been no objections filed since November 14, 2007.

Based upon the pleadings filed and reviewed by the Magistrate Judge and by this Court in making its decision to adopt the Magistrate Judges' Report, the Court finds that the Motion to Reconsider is without merit.

IT IS SO ORDERED THIS 4 day of January, 2008.

A handwritten signature in cursive script, appearing to read "James M. Moody", is written over a horizontal line.

James M. Moody
United States District Judge